



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
FREEDOM OF INFORMATION ACT BRANCH
Washington, D.C. 20570

Via email

August 11, 2021

Benjamin Peim

Re: FOIA Case Nos. NLRB-2021-001156 and NLRB-2021-001157

Dear Mr. Peim:

This is in response to your requests, under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, received in this Office on July 27, 2021, in which you seek copies of all documents in *Dawn Trucking Inc.*, Case Nos. 29-CA-171337 and 29-CA-174915. You assumed financial responsibility for the processing of each request in the amount of \$37.00, but also requested a fee waiver and expedited processing for each request.

We acknowledged your request on July 27, 2021. In an email to a member of my staff on July 27, 2021, you narrowed the scope of your requests to copies of the Complaint, Answer, and Transcripts in the requested case files. On July 28, 2021, your requests for a fee waiver were deemed not billable, given your fee category placement as a member of the news media. On that same date, your requests for expedited processing were granted.

A search of the Agency's electronic casehandling system, NxGen, has been conducted. As to your requests for the complaint and answer, these records were located and are attached. These cases were consolidated for complaint so there is only one complaint and one answer responsive to both requests. As a courtesy, we have also included copies of the amended answers, so there is only one amended answer, one second amended answer, and one third amended answer for both requests.

After a review, I have determined that portions of the attached records are exempt from disclosure under Exemptions 6 and 7(C) of the FOIA (5 U.S.C. § 552(b)(6) and (b)(7)(C)). These records are being provided to you either in their entirety or partially redacted to the extent they were found to be reasonably segregable from the exempt portions of the responsive records. Specifically, redactions have been made to protect the privacy interests of individuals named in the records. These redactions were made pursuant to FOIA Exemption 6, which pertains to information the release of which would constitute a clearly

unwarranted invasion of personal privacy, and FOIA Exemption 7(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of personal privacy. 5 U.S.C. § 552(b)(6) and (b)(7)(C).

As to your requests for transcripts, the only transcripts located in the requested case files were deposition transcripts, which are documentary evidence. These transcripts are being withheld in full under FOIA Exemption 7(A).

Exemption 7(A) allows an agency to withhold records included in an open investigatory file where disclosure could reasonably be expected to interfere with enforcement proceedings. *See NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 236 (1978). Therefore, since documentary evidence may be used in pending litigation, the deposition transcripts are being withheld in full pursuant to Exemption 7(A).

For the purpose of assessing fees, we have placed you in Category C, as a representative of the news media, in that you qualify as a person “actively gathering news for an entity that is organized and operated to publish or broadcast news to the public.” NLRB Rules and Regulations, 29 C.F.R. § 102.117(d)(1)(vii). Accordingly, there is no charge assessed for this request.

You may contact Lalitta Gillis, the FOIA Specialist who processed your request, at (202) 273-0101 or by email at Lalitta.Gillis@nrlb.gov, as well as the Agency's FOIA Public Liaison, for any further assistance and/or to discuss any aspect of your request. The FOIA Public Liaison, in addition to the FOIA Specialist, can further explain responsive and releasable agency records, suggest agency offices that may have responsive records, and/or discuss how to narrow the scope of a request in order to minimize fees and processing times. The contact information for the FOIA Public Liaison is:

FOIA Public Liaison
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: FOIAPublicLiaison@nrlb.gov
Telephone: (202) 273-0902
Fax: (202) 273-FOIA (3642)

After first contacting the Agency, you may additionally contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration

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8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: (202) 741-5770
Toll free: (877) 684-6448
Fax: (202) 741-5769

You may obtain a review of this determination under the NLRB Rules and Regulations, 29 C.F.R. § 102.117(c)(2)(v), by filing an administrative appeal with the Division of Legal Counsel (DLC) through FOIAonline at: <https://foiaonline.gov/foiaonline/action/public/home> or by mail or email at:

Nancy E. Kessler Platt
Chief FOIA Officer
National Labor Relations Board
1015 Half Street, S.E., 4th Floor
Washington, D.C. 20570
Email: DLCFOIAAppeal@nrlrb.gov

Any appeal must be postmarked or electronically submitted within 90 days of the date of this letter, such period beginning to run on the calendar day after the date of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Please be advised that contacting any Agency official (including the FOIA Specialist, Attorney-Advisor, FOIA Officer, or the FOIA Public Liaison) and/or OGIS does not stop the 90-day appeal clock and is not an alternative or substitute for filing an administrative appeal.

Sincerely,

/s/ *Synta E. Keeling*

Synta E. Keeling
FOIA Officer

Attachment: (25 pages)